IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6306 of 1997

For Approval and Signature:
HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Petitioner(s)
Versus
GUJARAT REVENUE TRIBUNAL & 1 - Respondent(s)

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Appearance :
MS TRUSHA PATEL, ASST. GOVERNMENT PLEADER for Petitioner(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1,
MR LN MEDIPALLY for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 24/12/2007

ORAL JUDGMENT

1. In this petition, the State Government has challenged the order dated 12.8.1992 passed by the respondent No.1 — Gujarat Revenue Tribunal in

revision application No.TEN.B.S.184 of 1989 whereby, the respondent – Tribunal allowed the revision application preferred by respondent No.2 and set aside the order passed by the Deputy Collector and restored the order passed by the Mamlatdar & ALT.

2. The facts giving rise to this petition are as follows:-

2.1 In 1976 one Shri Gulam Mahmud Rasul filed, in view of the provisions of Gujarat Agricultural Lands Ceiling Act; 1960, Form No.2 declaring his total holding of agricultural land. According to the details given in the said Form, it was declared that he was holding land admeasuring 16-Acres and 20-Gunthas.

2.2 The Mamlatdar & ALT took up the matter and passed order declaring that the total holding of the land holder would come to 37-Acres and 5-Gunthas of “dry crop land.” The said authority declared that 1-Acre and 5-Gunthas was surplus land.

2.3 The land holder being aggrieved by the said order carried the matter in appeal before the

Deputy Collector, who, by an order dated 27.6.1982 allowed the appeal and remanded the matter to the Mamlatdar & ALT for rehearing. The said order is not on record, therefore, it is not possible to ascertain the ground on which the appeal was allowed.

2.4 After the remand, the Mamlatdar & ALT held retrial and by an order dated 24.12.1986 again concluded that there was excess holding of 1-Acre and 5-Gunthas by the said land holder and upon conversion of said land into seasonally irrigated land, the excess land worked out to 20-Gunthas and that it was to be taken out from Survey No.269 of village Pipadara.

2.5 The said land holder, being aggrieved by the said order dated 24.12.1986, took the matter in appeal and the Deputy Collector allowed the appeal and remanded the matter to Mamlatdar & ALT. Around this time, somewhere in September – 1987, the said land holder i.e. Shri Gulam Mahmud Rasul expired.

2.6 Then, pursuant to the remand by virtue of order dated 24.12.1986, the Mamlatdar & ALT passed

an order dated 11.1.1988 wherein, the said authority, inter alia, found himself in agreement with the conclusion that 20-Gunthas of land was excess land. However, he deferred in his decision from that stage onwards inasmuch as he, in the said order dated 11.1.1988, proceeded to hold that if the land admeasuring 20-Gunthas was taken out of Survey No.269, then it would result into fragmentation and, therefore, he decided to allow the land holder to keep the entire parcel of land i.e. Survey No.269. On such decision, he directed that the notices issued to the land holder be withdrawn.

2.7 Subsequently the Deputy Collector, exercising suo-motu revisional powers, took the judgment and order dated 11.1.1988 in revision, which was registered as revision case No.222 of 1988. The said authority issued notices to the land holder, who attended the hearing and made submissions. After hearing the parties, the Deputy Collector passed an order dated 29.4.1989 declaring that Survey Nos.207/4 and 207/5 admeasuring 8-Gunthas and 14-Gunthas respectively were excess lands in hands of the land holder. He, therefore, declared that such excess land vests in Government.

2.8 Obviously, the land holder was aggrieved by the said order of the Deputy Collector and that therefore, under the provisions of Section 38 of the Act, he approached the respondent - Tribunal against the said order dated 29.4.1989.

2.9 Thereafter, the respondent — Tribunal heard the revision application and for the reasons recorded in the order dated 12.8.1992, allowed the revision application by setting aside the order dated 29.4.1989 by the Deputy Collector and restoring the order dated 11.1.1988 by the Mamlatdar & ALT.

2.10 It is against the said order that the present petitioner has approached this Court.

3. Heard Ms. Trusha Patel, learned AGP for the petitioner State and Mr. Medipally, learned Advocate for respondent No.2 (legal heir of deceased Gulam Mahmud Rasul).

4. An affidavit by one Shri A.S.Gamit, Under Secretary, has been filed to explain the delay in preferring

the subject petition inasmuch as against the order dated 12.8.1992, the petition is preferred in or around in July – 1997. By an order dated 29.6.1998, the petition was admitted and interim relief in terms of paragraph – 10(B) was granted by an order passed by this Court (Coram: Hon'ble Mr. Justice M.S.Shah). Therefore, now at this stage, issue regarding delay is not required to be addressed. Even Mr. Medipally has not opposed the petition on said ground.

5. Before proceeding further, it is required to be noted that the respondent – Tribunal while passing the order dated 12.8.1992, took into consideration the submission that the Deputy Collector had, while exercising suo-motu powers of revision, received additional evidence. The respondent – Tribunal held that the said authority i.e. the Deputy Collector had no jurisdiction to receive any additional evidence and since the authority had received additional evidence, the order was bad in law and deserved to be set aside.

5.1 In present matter, at one stage, an order dated 11.7.2007 came to be passed which was taken in

appeal by the petitioner — Government and the Division Bench passed an order dated 25.9.2007, which reads thus:-

"After hearing learned counsel for the parties, we see no justification in making the unwarranted observations by learned Single Judge and not deciding the petition on merits. We, therefore, quash and set aside the impugned order and remit the matter back to the learned Single Judge for fresh decision of the petition.

The appeal stands disposed of with the above directions."

After the said order dated 25.9.2007, now the matter is placed for final hearing.

6. Ms. Patel, learned AGP, submitted that the respondent — Tribunal committed jurisdictional error while setting aside the order of Deputy Collector. She submitted that the respondent — Tribunal exercised the jurisdiction mainly on the ground that the Deputy Collector had received additional evidence i.e. he recorded statements while exercising suo-motu revisional powers and that, in the judgment of respondent — Tribunal, was without jurisdiction and on that premise respondent —

Tribunal set aside the order of Deputy Collector. So as to buttress her submissions, she further submitted that the perusal of the order of the Deputy Collector demonstrates that while passing the said order, he had not relied only on the said submissions and though the statements were recorded and thereby additional evidence can be said to have been received, however, it ought not be held that the said action vitiated the order because ultimately, the said statements are not the only premise on which the order dated 29.4.1989 is passed.

6.1 Ms. Patel, learned AGP, further, submitted that if the respondent Tribunal found the procedure adopted by the Deputy Collector objectionable, then, the respondent Tribunal ought to have remanded the matter and there was no justification in setting aside the order of the Deputy Collector and in restoring the order dated 11.1.1981 passed by the Mamlatdar & ALT.

7. As against the aforesaid submissions of Ms. Patel, learned AGP, Mr. Medipally, Advocate, has not made

any other submission except submitting that the order of the respondent Tribunal is just and proper and it is not required to be interfered with. Mr. Medipally, with regard to Ms. Patel's alternative submission that if the respondent Tribunal found the procedure of the Deputy Collector objectionable and without jurisdiction then the matter ought to have been remanded, submitted that the order is just and does not require to be interfered with and that at the most, the matter may be remanded to the respondent Tribunal and not to the Deputy Collector.

8. In view of the submissions it is, at this stage, relevant to refer to Sec.38(1) of the Act. The said provision reads thus:-

> ***"38. (1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1957, an application for revision may be made to the Gujarat Revenue Tribunal constituted under the said Act against any order of the Collector on the following grounds only:-***
>
> ***(a) xxx xxx***
>
> ***(b) xxx xxx***

> ***(c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.***
> ***(2) In deciding applications under this section the Gujarat Revenue Tribunal shall follow the procedure which has been prescribed by rules and regulations made under the Bombay Revenue Tribunal Act, 1957."***

8.1 It is, from the aforesaid provisions, clear that the learned Tribunal can exercise its revisional power only if (i) there is substantial defect in following the prescribed procedure i.e. the defect must be substantial; and (ii) such substantial defect results in miscarriage of justice. Thus, unless the alleged defect is of substantial nature and unless the Tribunal is satisfied that the substantial defect has resulted in miscarriage of justice, it would not be justified in exercising its revisional powers. The provision obliges the Tribunal to arrive at and record conclusion on both counts. All and sundry errors or defects in following the procedure prescribed by the Act will not justify exercise of revisional powers

by the Tribunal for interfering with and setting aside the order of Collector. The legislature has clearly confined and restricted the exercise of Tribunal's revisional powers by providing ".... application for revision may be made.... against any order of the Collector on the following grounds only." (emphasis supplied). The provision casts obligation also on the applicant to satisfy the Tribunal on both counts and the applicant is obliged to show that the procedural defect, besides being of substantial nature also resulted into miscarriage of justice.

In the present case, therefore, even if one proceeds on the premise that there occurred procedural defect and the said procedural defect was substantial in nature, than also the question which would still stare is whether it resulted into miscarriage of justice.

In this regard it is pertinent that in each round of the subject proceedings i.e. at the time of the orders dated 2.11.1981 and 24.12.1986 as well as 11.1.1988 the concerned first authority i.e. the Mamlatdar & ALT had come to a categorical finding of

fact that the land holder was holding excess land. The said finding of fact came to be reaffirmed by the Mamlatdar & ALT in his order dated 11.1.1988 though, of course, he also further held that taking away 20-Gunthas land from land holder would result into fragment and therefore, the land may be permitted to be held by the land holder. Thus, the net result of the three orders viz. orders dated 2.11.1981, 21.4.1986 and 11.1.1988 and the continuous thread which passes through the said three orders is the ultimate concurrent conclusion that the land holder holds excess land and, it is pertinent that the respondent Tribunal has not arrived at any contrary finding or conclusion and has not held that the finding of fact by the Deputy Collector to the effect that the land holder has excess land to the extent of 8-Gunthas and 14-Gunthas respectively, was incorrect. In view of such finding of fact the respondent Tribunal ought to have obtained reply to the queries whether the procedural defect was of substantial nature and whether it resulted into miscarriage of justice. For reaching the replies, the respondent Tribunal would have been obliged to consider the aforesaid factual aspects of the matter.

9. It is relevant to note that in the order impugned in present petition i.e. the order dated 12.8.1992 passed by the respondent – Tribunal, the said finding of fact is not declared incorrect or illegal or contrary to the provisions of Act by the Tribunal. The impugned order by the learned Tribunal may be considered from another perspective also. It is another matter that on behalf of the respondent it was not urged, but it could have been contended that when the said orders were set aside while remanding the matter on earlier occasion they would not be of relevance for the respondent Tribunal while deciding the revision application No. 184 of 1989 against the order dated 29.4.1989. The said aspect, however, did not lift the obligation of the Tribunal to find out as to whether by virtue of the finding recorded by the Deputy Collector in the order dated 29.4.1989 miscarriage of justice was caused or not. The learned Tribunal could have exercised its revisional powers only after obtaining, for itself, the reply to the said query, from the applicant (i.e. present respondent) and from the record.

10.Thus, this is one of the reasons why the learned Tribunal ought to have examined the impugned order on merits and tested it on the touchstone of the query, whether the findings by the Deputy Collector in the order dated 29.4.1989 result into miscarriage of justice and also as to whether the said findings, independent of the said additional evidence, are otherwise maintainable in law and on facts. The respondent Tribunal, instead, took into consideration only the procedure adopted by the Deputy Collector and noted that he had committed error by receiving additional evidence.

11.Though the learned Tribunal has not recorded finding that the said procedural error or defect was substantial in nature, if one proceeds on the premise that the said procedural irregularity and defect can be said to be of “substantial nature,” then also the other vital test is, apparently not answered by the learned Tribunal inasmuch as the learned Tribunal has not dealt with the issue as to whether the procedural defect resulted into miscarriage of justice. In absence of clear reply to the said issue, it cannot be assumed that the second ingredient, necessary for exercising the revisional

jurisdiction, is present in this case. Actually, the said exercise ought to have been undertaken before setting aside Deputy Collector's order dated 29.4.1989. In this regard, at this stage, it is relevant to refer to the judgment in the matter between ***Divaliben Wd/o Premabhai Vitthalbhai V/s. Mavjibhai Vasanjibhai Ahir [*1995 (1) GLH Pg 578] wherein this Court [Coram: Hon'ble Mr. Justice A.N.Divecha (as his Lordship then was)], while considering similar provision, namely Section 76(1) of Bombay Tenancy & Agricultural Lands Act, 1948, held that,

> ***"10. Even assuming for the sake of argument that examination of a witness at trial without administering oath to him is a defect of substantial nature irrespective of its influencing the decision making authority, the second facet of the condition precedent for exercise of revisional powers under Section 76(1)(c) of the Act on that ground has to be kept in mind. The Tribunal has been ordained thereby to take into consideration whether or not such defect has resulted in miscarriage of justice. If there is no miscarriage of justice on account of a***

substantial defect in following the procedure provided by the Act, the Tribunal can be said to be overstepping its limits if it upsets the order or orders under challenge before it on that ground in exercise of its powers under Section 76 of the Act."

12. The respondent Tribunal found fault with the procedure adopted by the Deputy Collector and held that the action of the Deputy Collector of receiving additional evidence was without jurisdiction. The Tribunal, however, stopped at that stage and failed to find out whether the procedural defect had resulted into miscarriage of justice. The Tribunal also did not address the issue as to whether the conclusions by the Deputy Collector regarding factual aspects were justified and tenable or not and whether it could have been arrived at without the said additional evidence. When the land holder approached the Tribunal against the Deputy Collector's decision holding, inter alia, that the land holder was holding excess land, it was in fitness of things as well as in the interest of justice that the said finding and its legality were

also tested by the respondent Tribunal and to record its finding in the order so as to find out whether it resulted into miscarriage of justice. If the reply were to be in negative, then there would not be occasion or justification to exercise revisional jurisdiction. This could have been examined by the respondent Tribunal by testing the said finding of fact by addressing the question as to whether the finding recorded regarding excess holding can be sustained without taking into account the said additional evidence, or not and whether the said finding of fact, in absence of additional evidence i.e. on the basis of material available before original authority, was justified and right or not.

13. It is not possible for this Court to go into or address the said issue and/or find answer to that question in this proceedings under Article 227 of the Constitution of India more particularly in absence of the relevant and complete record including the details of conversion into seasonal irrigated land. Since, the said aspect has not been addressed and examined by the respondent Tribunal while passing the order, and since the findings of fact arrived at by the Deputy Collector are not held

incorrect or illegal on merits by the Tribunal on the basis of the material other than the additional statements recorded by the Deputy Collector and since it apparently appears that issue regarding merits and maintainability of Deputy Collector's order is not effectively addressed by the respondent Tribunal, there is an error apparent on the face of the record and the respondent Tribunal has, to that extent, erred in exercising the jurisdiction. Since, as noted above, the said issue i.e. the legality and maintainability of the order of Deputy Collector independent of the additional evidence which was received by him, cannot be gone into and cannot be examined in this proceedings and the answer cannot be searched here, it is inevitable that it will have to be decided by the respondent Tribunal.

14.Therefore, I am inclined to accept the petition and to hold that though the respondent Tribunal found the procedure adopted by the Deputy Collector objectionable and without jurisdiction, the learned Tribunal ought to have addressed and replied, before exercising the revisional jurisdiction and setting aside the order dated 29.4.1989, the issue whether the findings by the Deputy Collector in his said

order resulted in miscarriage of justice and the learned Tribunal also ought to have decided the issue, independent of such additional evidence and on merits.

15. In view of the aforesaid discussion, the impugned order dated 12.8.1992 is set aside. The matter is remanded to the respondent Tribunal. It is clarified that the aforesaid discussion and observations are only prima-facie and they are not to be construed to mean that the finding of fact by the Deputy Collector is approved by this Court in this order. The respondent Tribunal shall independently decide the revision application preferred by the respondent No.2 on its own merits. Almost 20 years have passed since authority had initially decided the matter, it would be appropriate if the respondent Tribunal hears and decides the matter as early as possible preferably within a period of 6 months from the date of receipt of the copy of this order. Rule made absolute to the aforesaid extent. No order as to costs.

[K.M.Thaker, J.]

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